IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5339 OF 2004

Mr. Shankar Bose ..Applicant.

V/s.

State Maharashtra & Anr. ..Respondents.

Smt. N.S. Nappinai for the Applicant.
Shri A.S. Gadkari, APP for Respondent No.1.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 22, 2004

PC :-

1. Heard counsel for the parties. None appears for Respondent No.2 though served. Shri Gadkari, waives notice for respondent No.1-State.

2. The short question involved in the present petition is; whether any case is made out against the present applicant accused No.5 to indicate his complicity in the commission of the offence committed by the Company ?. The only allegation that can be discerned, even on fair reading of the complaint, is that the said applicant was director of the accused company and was responsible for the day to- day management of the accused company. It is not in

dispute that the applicant is not the signatory to the cheque in question. However, there is no allegation against the applicant to indicate his complicity in relation to the offence committed by the accused company within the meaning of section 141 of the Act. Recently I had occasion to consider the question as is required to be considered in the present application, in the case of Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. in criminal writ petition No. 2241/2004 decided on 14th December, 2004. It is well settled that merely because the person is director of the accused company, does not make him liable for the offence committed by the Company. Something more has to be alleged and established, which is clearly lacking in the present complaint. In other words, no material facts are alleged in the complaint as filed so as to make the applicant liable within the meaning of section 141 of the Act.

3. Accordingly, this application succeeds and the same is allowed in terms of prayer clause (a) to the extent of applicant- accused No.5 only.

4. Ordered accordingly.

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